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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Assessment mission by the Office of the United Nations High Commissioner for Human Rights to improve human rights, accountability, reconciliation and capacity in South Sudan*

Report of the United Nations High Commissioner for Human Rights

Summary

The present report, prepared pursuant to Human Rights Council resolution 29/13, contains the main findings of the comprehensive assessment conducted by the Office of the United Nations High Commissioner for Human Rights into allegations of violations and abuses of human rights and violations of international humanitarian law in South Sudan since the outbreak of violence in December 2013. The Office of the High Commissioner examines alleged violations and abuses committed by State actors and non-State armed groups during the conflict, with particular focus on the worst affected states of Unity and Upper Nile States, and also Western and Central Equatoria, where the conflict has spread. An overview of the way forward towards accountability is also provided, including ensuring the implementation of the transitional justice and accountability mechanisms included in the Agreement on the Resolution of the Conflict in the Republic of South Sudan, signed in August 2015.

In the report, the Office of the High Commissioner also examines the impact of technical assistance and capacity-building services provided to government institutions. It concludes with recommendations addressed to all parties to the conflict, the transitional Government of national unity, the international community, the African Union Commission, the Human Rights Council and the Security Council.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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I. Introduction

1. In its resolution 29/13, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) urgently to undertake a mission to engage with the Government of South Sudan, to monitor and report on the situation of human rights, and to conduct a comprehensive assessment of allegations of violations and abuses of human rights with a view to ensuring accountability and complementarity with the African Union commission of inquiry. The Council also requested the High Commissioner to present a report of the assessment at its thirty-first session. The present report is submitted to the Council pursuant to that request.[1]

2. The High Commissioner deployed a team to Juba from October 2015 to January 2016. The Government of South Sudan established a task force to liaise with the team and to respond to requests for documentation and access to persons and places.

3. In accordance with its mandate, the assessment team examined alleged violations and abuses of human rights committed by both State actors and non-State armed groups from the outbreak of violence in Juba in December 2013 until the end of December 2015, taking into account reports issued by the High Commissioner, the United Nations Mission in South Sudan (UNMISS) and the African Union commission of inquiry.[2] The team focused particularly on violations and abuses committed in 2015.

4. Owing to severe access constraints and the limited time available, the assessment was focused on Unity and Upper Nile States, which had been most heavily affected by the conflict, and other States to which the conflict had spread, namely, Western and Central Equatoria States. This particular attention was motivated by the gravity of the allegations of violations of international humanitarian and human rights law, and human rights abuses, and their significance in demonstrating patterns.

5. The assessment team faced considerable challenges in conducting its work: lack of cooperation from the Government; limited access to conflict areas; and serious issues relating to the protection of victims and witnesses.

6. The assessment team was able to confirm that the patterns of human rights violations and abuses and violations of international humanitarian law identified in previous reports of the United Nations and the African Union continued throughout 2015. In particular, the assessment revealed that sexual and gender-based violence, which had been a hallmark of the conflict-related violence in 2014, was widespread throughout 2015, particularly in Unity State, where government forces and affiliated militia were apparently the parties primarily responsible. The widespread character of the sexual violence against women and girls, and its broader implications for the social fabric, is a matter of grave concern.

7. In the present report, OHCHR aims to contribute and give impetus to the establishment of an effective and sustainable process of accountability, truth and reconciliation that will also provide guarantees of non-recurrence for the thousands of victims and their families who have suffered immeasurably. Failure to address the deeply engrained disregard for human life will only lead to the recurrence of such violations.

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[1] For detailed findings of the assessment mission undertaken by OHCHR to South Sudan, see document A/HRC/31/CRP.6.

[2] See UNMISS, Conflict in South Sudan: A Human Rights Report, 8 May 2014; African Union Commission of Inquiry Report, 15 October 2105; and OHCHR – UNMISS, The State of Human Rights in the Protracted Conflict in South Sudan, December 2015.

II. Context and recent developments

8. Since the outbreak of the crisis in December 2013, the situation of human rights has deteriorated dramatically. All parties to the conflict have perpetrated gross violations and abuses of international human rights and serious violations of international humanitarian law, including attacks against civilians, rape and acts of sexual violence, arbitrary arrest and detention, abduction and attacks on journalists, United Nations personnel and peacekeeping facilities. Many civilians have been attacked and killed in their homes, and also in places of shelter, including churches, mosques, hospitals and medical facilities, and in United Nations bases. Thousands have been killed; more than 2 million South Sudanese have been displaced from their homes, more than 1.5 million of them within the country, and many have sought refuge on the premises of United Nations bases.

9. In May 2014, the Secretary-General advised the Security Council that there were reasonable grounds to believe that crimes against humanity had been committed in South Sudan. The Africa Union commission of inquiry reached the same conclusion in its report.

10. In August 2015, the parties to the conflict signed a peace agreement intended to halt the fighting, and put in place processes for establishing a transitional Government of national unity. The agreement provided for the establishment of a hybrid tribunal, under the auspices of the African Union, with the authority to prosecute genocide, war crimes, crimes against humanity and other serious crimes. It also required that the future transitional Government create, within six months, a truth and reconciliation commission to establish a record of violations of human rights perpetrated since the start of the conflict, and a compensation and reparations authority. As at February 2016, the transitional Government had not yet been established.

III. Overview of alleged violations and abuses of human rights and violations of international humanitarian law

A. Background

11. The killings, sexual violence, displacement, destruction and looting that characterized the conflict in continued unabated through 2015. In 2015, while all parties to the conflict continued to commit serious violations and abuses, the Government appears to have been responsible for gross and systematic human rights violations. One major development was the outbreak of conflict in the Equatorias, where the Government strove to suppress the armed "opposition". Over the same period, acts of intimidation by the State security apparatus against the media and civil society entities increased.

B. Main findings

12. The main findings made by the assessment team were based on the information it collected, including satellite imagery provided by the Operational Satellite Applications Programme (UNOSAT). Given the scope of the allegations and their gravity, consistency, recurrence throughout the period under review, and the similarities in their modus operandi, the team found reasonable grounds to believe that gross violations and abuses of international human rights, serious violations of international humanitarian law and other international crimes had been committed during 2015. If established before a court of law, these allegations may, depending on the circumstances, constitute war crimes and/or crimes against humanity.

1. Killings

13. The civilian death toll arising from the conflict appears in large part to have been due to the direct targeting of civilians by armed actors rather than to incidental losses arising from crossfire.

14. In late April 2015, in Unity State, the Government launched a multi-pronged attack to regain control over the territories under the control of the opposition. Backed by armed youth groups mainly from the Bul Nuer and the Jagei Nuer, the military offensive had a devastating impact on civilians. In what might be described as a "scorched earth" policy deliberately targeting civilians, the Sudan People's Liberation Army (SPLA), backed by armed militia and county commissioners, killed civilians, including women, children and older persons, raped women and girls, looted and burned civilian property and pillaged tens of thousands of livestock.

15. According to a recent report by the Office of the Deputy Humanitarian Coordinator in South Sudan, the violence in Unity State caused, from November 2014 to November 2015, an estimated 10,553 civilian deaths, 7,165 of which were due to violence, and 829 deaths from drowning, the abduction of 890 persons and 1,243 persons to go missing.[3] The village of Gandor, in Leer County, for example, was repeatedly attacked by a mix of SPLA soldiers and groups of armed youths in May, August and November 2015. A witness described how, in the August attack, government forces backed by the groups shelled the entire village before they embarked on a massive operation of destruction and looting. One witness reported having seen a pregnant woman be shot in the back as she fled the attackers.

16. At the end of October 2015, Pilling, in Leer County, was attacked by SPLA soldiers and armed youths, mostly from the neighbouring county of Koch. One woman described how the attackers shot and killed her husband in her presence, and how the assailants later locked her grandfather in a storage room and burned him alive. In a similar incident during an SPLA attack at the end of November 2015 in the village in Maal, in Mayendit County, a woman reported that she had been forced to look on as her 80-year-old father-in-law was burned alive in a hut.

17. Several sources provided information about an incident on or around 22 October 2015, in Leer town. According to witnesses and other credible sources, approximately 60 cattle keepers suffocated while detained in a container in a former Catholic compound in Leer town, which was, at the time, apparently being used by the acting Leer County Commissioner and SPLA. The cattle keepers, who were mostly from the surrounding villages of Leer, were requested by SPLA and local authority officials to take their cattle to Leer for protection. Witnesses reported seeing the men being rounded up and taken to the container. Others reported seeing the container being guarded by an SPLA soldier at the Catholic compound. According to credible information, all men, with the exception of one, died within one or two days of detention. Their bodies were later dumped in a nearby area. In November, the assessment team visited the alleged dumping ground and confirmed the presence of human remains. If established, these act would constitute violations of the right to life and of the obligation to protect the life of the individuals in detention, including to investigate the cause of their death and to prosecute those found responsible. Moreover, the conditions of detention leading to the death of these individuals amount to torture and other cruel, inhuman and degrading treatment or punishment.

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[3] *Crisis Impacts On Households in Unity State, South Sudan, 2014-2015*, Office of the Deputy Humanitarian Coordinator in South Sudan, January 2016.

18. One source reported that, in Upper Nile State, after an attack in July 2015 by SPLA, he returned to his village to look for civilians left behind and found in their huts the bodies of a woman and a man, both with physical disabilities and bearing gunshot wounds. Another witness reported that, on 2 September, when he saw SPLA helicopter gunships and amphibian tanks crossing the river, he and several others crossed to the west bank. When he noticed that his children were missing, he returned to the village, where he saw the bodies of six women and of two boys of about seven years of age hanging from a tree.

19. The team also learned of an attack in June 2015 conducted by opposition forces from the Shilluk tribe on Atar Island, Pigi County, in Jonglei State, near the border with Upper Nile State. Shilluk commanders had accused the Dinka community of hiding fighters and munitions to attack the Shilluk positions in Pigi. During the attack, numerous civilians were killed, including six young men and a woman, with their hands tied with ropes made of soft grass. Some of them had been shot, others cut to pieces with a *panga* (sickle).

20. In Central Equatoria State, in September 2015, witnesses and credible sources reported the killing by SPLA soldiers of civilians who had returned to their village to search for missing relatives or food. In one case, villagers found the body of a woman who had been shot while collecting beans from her field. On two separate occasions, SPLA members shot and killed young men who had returned to their village to retrieve personal belongings, accusing them of belonging to the opposition.

21. In Western Equatoria State, the assessment team confirmed that, in May 2015, SPLA members injured and killed civilians, including children, and looted and destroyed civilian property in Mundri town for three days. SPLA soldiers also surrounded the county prison and opened fire on prison officers, killing one and injuring another. Sources also reported that children and adults drowned while attempting to flee; their bodies were seen floating in the Yei River. Over the three days, between 60 and 110 people were estimated to have died (see S/2015/655, para. 25).[4] The killings violate the prohibition of the arbitrary deprivation of the right to life. In addition, during a non-international armed conflict, directing attacks against civilians not directly participating in hostilities, including in some cases by burning them alive in their homes, is a violation of Additional Protocol II to and common article 3 of the Geneva Conventions, which prohibits all violence directed against civilians, including murder, mutilation, cruel treatment and torture.

22. Forces affiliated with both sides have singled out civilians on the basis of ethnicity – Nuer, Dinka or Shilluk – for violence or mistreatment. Such discriminatory treatment is a violation of international human rights law, which prohibits discrimination, and common article 3 of the Geneva Conventions and the fundamental guarantees set out in article 4 of Additional Protocol II.

23. The patterns identified in Unity State appear to have been deliberate, ethnicity-based attacks on civilians that were either widespread or systematic. The violence committed there was defined by both its scale and method. The violations described were not random, accidental or isolated acts of violence, but rather required a degree of preparation that the assessment team believes is revealed through the patterns of violent conduct by SPLA, affiliated militia and county commissioners. As described above, killings and other acts of violence against civilians constitute serious violations of international humanitarian law. In addition, such acts, depending on the circumstances and if established before a court of law, may also have violated article 13(2) of Additional Protocol II.

24. The assessment team also found reasonable grounds to believe that civilians in the conflict-affected states had been killed or harmed in reprisal for or response to their

[4] South Sudan Protection Cluster, Protection Trends South Sudan, No. 5, April-June 2015, July 2015.

perceived support for the other side. The attacks, such as the beating of Nuer civilians accused of supporting the Dinka in Bentiu, and assaults against Shilluk civilians in Malakal, may constitute collective punishment in contravention of article 4(2) (b) of Additional Protocol II to the Geneva Conventions. The team identified a pattern of SPLA and opposition "tactical withdrawals" that left local populations vulnerable, including to retribution from opposing forces. Given the considerable danger arising from the military operations, safety measures should have been taken to avoid incidental losses, or in any case to reduce them to a minimum.

2. Sexual and gender-based violence

25. The assessment team confirmed that sexual and gender-based violence continued in 2015, and on a widespread basis in Unity State.

26. In Unity State, the Protection Cluster in South Sudan reported more than 1,300 cases of rape between April 2015 and September 2015.[5] Alarmingly, some of the women to whom the assessment team spoke reported that sexual violence and rape had increased in Unity State as the conflict progressed.

27. The assessment team received information that the armed militias, mainly comprising youths from Mayom or Koch counties who carry out attacks together with the SPLA, do so under an agreement of "do what you can and take what you can". In one case, a mother of four children gave a harrowing account of how she was separated from her group while walking from her village to Bentiu. When she reached another village, she encountered a group of soldiers and armed men in civilian clothing who accused her of lying about from where she had arrived. The men stripped her naked, then five soldiers raped her on the roadside in front of her children. She was subsequently dragged into the bush by another two soldiers, who raped her there. When she eventually returned to the roadside, her children, aged between two and seven, were missing. At the time of the drafting, her children were still missing.

28. One woman described how, during an attack on her village in Koch, in October 2015, SPLA soldiers, after killing her husband, had tied her to a tree and forced her to watch as her 15-year-old daughter was raped by at least 10 soldiers. In another incident, an 18-year-old girl explained to the team how, in early October 2015, during an attack on Gandor, in Leer County, she had been found by SPLA soldiers, who beat and raped her twice before handing her over to two armed men in civilian clothing who also raped her. Upon her return home, she learned that her three sisters and mother had also been raped.

29. In Upper Nile, as in Unity State, sexual and gender-based violence often followed armed clashes, and targeted women belonging to the ethnic groups of opposing forces or on suspicion of belonging to the opposition. In Maban County, the assessment team received allegations of the rape of four girls during clashes between the SPLA and opposition forces in Liang, Maban County. It also received credible reports of the sexual assault of elderly women by opposition forces in Pigi County, Jonglei State, close to the border with Upper Nile.

30. Between April and December 2015, protection actors documented numerous allegations of abduction, rape, killing and disappearance of women (mostly Shilluk) from

[5] See South Sudan Protection Cluster, Protection Situation Update: Southern and Central Unity (April – September 2015); and Flash Update, Protection Situation in Southern and Central Unity (September – October 2015).

areas outside the UNMISS protection-of-civilians site, and on the roads and pathways from the protection-of-civilians site to Malakal.[6]

31. According to credible sources, on 25 May 2015, during fighting in Malakal Town, 24 women from the Shilluk community sought refuge in the SPLA barracks at Ayat Company. SPLA detained several of the women who were repeatedly raped.

32. Cases of rape were also reported when women left the UNMISS protection-of-civilians site to pursue various livelihood activities, such as gathering food and firewood.[7] One witness described how she and other Shilluk women had encountered five SPLA soldiers on their way from the UNMISS protection-of-civilians site in Malakal to the riverside. The soldiers called upon them to stop, but they ran back towards the site. One of them only returned to the UNMISS protection-of-civilians site after two days, and informed the witness that she had been abducted and raped by the soldiers.

33. One of the most notable effects of the sexual and gender-based violence continuing in and around Malakal is the fear and paralysis it has instilled in the community. It was evident during meetings with the assessment team that women were in a state of permanent insecurity and felt compelled to take great risks. One displaced explained noted that "women are suffering a lot. When we go to town, we risk falling into the hands of soldiers, being raped and abandoned. Women who try to resist risk being killed." Because of this fear, she no longer ventured into town to collect firewood and food, preferring to stay closer to the UNMISS protection-of-civilians site. She pointed out that SPLA soldiers generally followed women's movements with a view to assaulting them sexually.

34. The assessment team also documented reports of abductions of women in Unity, Upper Nile and Central Equatoria States.

35. In Unity State, several women reported having been abducted or witnessed other women being abducted. In some reported incidents, women were taken to help SPLA and affiliated militias to carry looted items, and were released once they had arrived at the destination, usually Leer or Koch town.

36. Several women also spoke of having been taken as "wives" by soldiers and kept in barracks, or "where the soldiers sleep". The assessment team received first-hand accounts from at least three women who were abducted, kept forcefully by soldiers and raped repeatedly. One woman explained to the assessment team how she and 27 other women had been abducted from a village in Leer during an attack by SPLA in October. She reported having been made to carry looted items to Koch, where she and the other women were then "shared" among the soldiers as "wives". She was forced to live with her abductor for a week and to carry out chores that included cooking, cleaning and fetching firewood.

37. Between April and December 2015, in Upper Nile, protection actors documented numerous allegations of abductions of women from areas outside the UNMISS protection-of-civilians site and on the roads and pathways from the protection-of-civilians site to Malakal.[8] A woman told the assessment team that, at the end of November 2015, a close relative had left the UNMISS protection-of-civilians site to collect firewood in the morning and did not return in the evening. The following day, the body of a woman was found in an abandoned house, in Malakal town. Neighbours in the protection-of-civilians site identified her missing relative, who was found wearing only her underwear on a bed, her neck twisted. On 11 October, in Central Equatoria State, a 21-year-old woman and her two small children were abducted in the vicinity of a village where SPLA had recently set up

[6] South Sudan Protection Cluster, South Sudan Protection Trends, No. 6, July – September 2015.
[7] Ibid.
[8] Ibid.

barracks. They had been on the way to the family farm to collect food. Witnesses told the assessment team that three women had gone missing in Mondikolo village, including a 49-year-old blind woman. The witnesses assumed that they had been abducted by SPLA, which had swept through the area; if they had been killed, their bodies would have been found, the witnesses suggested. Sources believed that several women had been abducted and remained on as "wives" of soldiers in the SPLA barracks.

38. Rape, including gang rape, is a serious violation of international human rights law. Sexual violence is prohibited by the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Rape committed in connection (nexus) with an armed conflict breaches international humanitarian law and may amount to a war crime.[9] Additional brutality or humiliation accompanying the rape may constitute an outrage upon personal dignity and cruel treatment.[10]

39. Rape has been an element of an apparently intentional strategy for terrorizing and punishing the population; if established before a court of law, and depending on the circumstances, it may amount to a crime against humanity or/and a war crime. In addition, if committed on discriminatory grounds, such as on the basis of ethnicity of the victim, it may, if established by a court of law, constitute persecution and a crime against humanity.

3. Recruitment and use of children in hostilities

40. The assessment team received numerous testimonies of boys who had been abducted and taken to the SPLA barracks in Bentiu to be conscripted. During a visit to Bentiu and Leer, the team observed young boys wearing SPLA uniforms and carrying guns. Moreover, members of the team spoke with children in Leer town who referred to regular recruitment of boys by SPLA in the area. According to credible sources, in Upper Nile State, the militia led by Major-General Olonyi (prior to his defection to the opposition) allegedly conducted forced recruitment of a significant number of children in Shilluk communities on the west bank of the Nile (see S/2015/296, para. 43).[11]

41. Recruiting children who have not reached the age of 15 years or using them to take part in hostilities is prohibited under article 4(3)(c) of Additional Protocol II to the Geneva Conventions. Moreover, according to section 31 of the Child Act of 2008, the minimum age for conscription or recruitment into armed groups in South Sudan is 18 years, and children must not be used in any military or paramilitary activities.[12]

4. Destruction and looting of civilian property

42. According to reports received from victims and witnesses on the SPLA offensive in Unity State in 2015, government forces and their allied militias systematically burned homes and entire villages and looted property. In most instances, shelters were deliberately burned after household items, including clothes and food, had been looted. Many people who had fled their villages ahead of the attacks later returned to find their homes completely gutted by fire or empty. In some instances, food stocks and seeds stored in huts that could not be taken had been burned. Satellite imagery provided by UNOSAT allowed the team to corroborate testimonies of the systematic destruction of towns and villages in

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[9] Additional Protocol II, art. 4(2)(e). See also International Criminal Tribunal for the former Yugoslavia, *Furundžija* case, judgment of 10 December 1998, and *Kunarac et al* case, judgment of 22 February 2001. See also Rome Statute, art. 8(2)(e)(vi).

[10] Rome Statute, art. 8(2)(c)(i) and (ii).

[11] See also OHCHR – UNMISS, The State of Human Rights (see footnote 2), paras. 66-67.

[12] The exemption of persons who have not reached the age of 18 years from military activity is also codified in article 17 of the transitional Constitution (2011) and section 22 of the SPLA Act (2009).

southern and central Unity. Imagery obtained for Gandor, in Leer County, from May to December 2015, indicated that around 674 civilian structures – about 75 per cent of structures in the area – were destroyed.

43. The SPLA attacks were also characterized by the massive looting of livestock, particularly cattle. As a main indicator of wealth for many ethnic groups in the area, cattle became a primary objective of attackers during the military offensive. For many of the allied militias who fought alongside SPLA, it was an opportunity to increase their herds. In most cases, the looted cattle was taken to areas controlled by SPLA, particularly Koch, Mayom, Leer and Bentiu.

44. In September 2015, witnesses in Central Equatoria reported that SPLA was engaging in widespread looting of shops, offices and private homes in Wonduruba, Mankaro, Mengele and Katigiri.[13] Witnesses from Mondikolo informed the assessment team that a few days after an attack on their village on 10 September, they had found the village razed to the ground and the local dispensary looted. Witnesses from Katigiri reported that SPLA soldiers took roofs, solar panels, furniture and electrical appliances from public buildings, including from the Katigiri Primary Health-Care Centre and the primary school. School material and medicines had also been looted.

45. In Western Equatoria, credible information collected by the assessment team indicated that SPLA had looted and destroyed private and public property during the escalation of violence in Mundri town, in May 2015. On 22 May, the Mundri prison warehouse was looted of all food, medication and weapons. On 24 May, 15 motorcycles belonging to a non-governmental organization were stolen by armed men believed to be SPLA soldiers. During the incidents in Mundri West and East, in September and October, SPLA members looted houses and shops extensively. Between July and December, in Yambio, looting and the destruction of property were widespread. From 7 to 10 December, the Ikpiro, Hai Tarawa, Asanza 1 and Asanza 2 neighbourhoods of Yambio were targeted for destruction when government forces clashed with a group of armed youths. The Office of the United Nations High Commissioner for Refugees reported that more 200 huts were destroyed and several hundred others were looted.[14]

46. Human rights standards prohibit the arbitrary deprivation of property. Under international humanitarian law, civilian objects are protected; their deliberate destruction under certain circumstances may amount to a war crime in non-international armed conflict.[15] The extensive destruction of residential structures in Unity State is an example of damage that cannot plausibly be justified by military necessity. The number, extent and frequency of hut burnings across Unity State by SPLA and associated militia throughout 2015 suggest that the practice was wilful and wanton. The numerous documented accounts of cattle raids in Unity State may amount to a violation of the prohibition of arbitrary deprivation of property and the provision proscribing pillage in Additional Protocol II.[16] The prohibition on pillage extends to property belonging to private persons, as well as to

[13] See OHCHR – UNMISS, The State of Human Rights (see footnote 2).

[14] South Sudan, UNHCR Operational Update 1/2016.

[15] See International Covenant on Civil and Political Rights, art. 17. See also Rome Statute, art. 8(2)(e)(xii), which reflects a point of customary international law. The jurisprudence of the International Court of Justice, in its advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons* of 8 July 1996, and of the International Criminal Tribunal for the former Yugoslavia, in its judgement of 14 January 2000 on *Kupreškić et al.* and its decision on the joint defence motion and judgement of 26 February 2001 on *Kordić and Čerkez*, provide further evidence that the prohibition on attacking civilian objects is customary in both international and non-international armed conflicts.

[16] See International Covenant on Civil and Political Rights, art. 17, and Additional Protocol II, arts. 4(2)(g) and 14.

property belonging to communities or the State.[17] The alleged "do what you can, take what you can" arrangement by which armed groups in Unity State derived their compensation from pillaged goods rather than from salary constitutes a form of organized pillage.

5. Violations of freedoms of opinion and expression and of assembly

47. Violations of freedoms of opinion and expression and of peaceful assembly, and from arbitrary arrest and detention have been an issue of great concern in South Sudan since the State declared its independence. The Government, and in particular the National Security Service, has attempted to suppress debate and opposition, resulting in fear among the population.

48. OHCHR and UNMISS have highlighted a number of cases since 2013 of intimidation, harassment, arrest and detention of individuals and groups by the National Security Service.[18] These cases include the closure of media outlets, the confiscation of newspapers and media equipment, the arrest and detention of journalists, the detention of United Nations national staff members perceived to support the opposition, and the killing of journalists.

49. At least seven journalists were killed in 2015; to date, none of the killings has been investigated. During a press encounter on 16 August 2015, while heading for the peace talks in Addis Ababa, President Kiir made a statement in which he threatened journalists who reported "against" their country. He dismissed complaints about the lack of press freedom, stating that "if anybody among [journalists] does not know this country has killed people, we will demonstrate it one day, one time."[19] On 21 October 2015, it was reported that President Kiir had ordered Juba University to dismiss Dr. Luka Biong Deng (who promptly left the country), after he had organized a debate on the Government's proposal to create 28 States, in which panellists challenged the Government's legal authority to do so.

50. In November 2015, a journalist informed the assessment team that "many media outlets are intimidated. They could be closed down for a day, a month, forever." On 29 December 2015, Joseph Afandi, a journalist for *El Tabeer* newspaper, was arrested by plain-clothed agents and held without charge at the headquarters of the National Security Service in Juba following the publication of an article in which he criticized the Government's economic policy. According to reports by non-governmental organizations, he was released on 19 February without charge.[20]

51. Attacks on the freedom of opinion and expression, and of peaceful assembly, and arbitrary arrests for exercising these rights violate the State's obligations under international human rights law and relevant provisions of national law, including those of the transitional Constitution.

6. Starvation of civilians

52. The numerous incidents of crop burning, cattle raiding, and looting and destruction of food supplies described above has had a severe impact on the access of civilians to food – as seen in Unity State, where the Integrated Food Security Phase Classification analysis showed that at least 30,000 people were living in extreme conditions and faced starvation and death – and therefore on their health.[21] The "scorched earth" policy, involving the

[17] See Commentary to the Geneva Conventions, vol. IV, art. 33.
[18] OHCHR – UNMISS, The State of Human Rights (see footnote 2).
[19] Committee to Protect Journalists, Alerts, 17 August 2015.
[20] Amnesty International, Urgent Action, "Journalist released without charge", 22 February 2016.
[21] See World Food Programme, "UN calls for immediate access to conflict-affected areas to prevent

razing of entire villages and the pillaging and destruction of resources, constitutes deliberate deprivation of the means indispensable to the survival of the civilian population. Such conduct is a violation of international human rights law, namely the right to life and the right to adequate food.[22] It is also prohibited by article 14 of Additional Protocol II.

IV. Looking ahead: the road to accountability

53. States have an obligation to investigate promptly, thoroughly, independently and impartially any allegations of human rights violations or abuses, to prosecute those responsible, and to ensure that victims have access to an adequate and effective remedy for such violations and guarantees of non-recurrence.[23]

54. Over the course of the conflict in South Sudan, both sides have made repeated commitments to protect civilians, to end the violence and to punish perpetrators. On 24 January 2014, the Head of State announced, by presidential order, the establishment of an investigation committee to investigate human rights abuses committed by both parties to the conflict. While government officials have repeated promises that the committee would submit a report on its findings to the United Nations, no report has yet been released.

55. Despite the repeated commitments to end violence, to protect civilians and to punish perpetrators, to date there has been any evidence or public information available of any genuine effort by the Government to investigate, prosecute and punish violations and abuses, some of which amount to international crimes.

56. On 19 August 2015, the parties to the conflict, under the stewardship of the Intergovernmental Authority on Development, signed the Agreement on the Resolution of the Conflict in the Republic of South Sudan, establishing a transitional Government of national unity. The section of the Agreement dedicated to "transitional justice, accountability, reconciliation and healing", contains provisions for the establishment of three transitional justice bodies to "independently promote the common objective of facilitating truth, reconciliation and healing, compensation and reparation"; a commission for truth, reconciliation and healing; an independent hybrid court; and the Compensation and Reparation Authority. The Agreement commits the transitional Government to cooperate fully with and to seek the assistance of the African Union, the United Nations and the African Commission on Human and Peoples' Rights in the design, implementation and facilitation of the work of the agreed transitional justice mechanisms provided for in the Agreement.

57. For a truth-seeking mechanism to be effective, political will is needed to allow and to support actively an inquiry into past violations and abuses; furthermore, victims and witnesses must be interested and have confidence in the process, without fear of cooperating. Genuine, broad-based consultations and a needs assessment should be conducted to inform efforts to achieve truth, reparations, reconciliation and guarantees of non-recurrence.

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catastrophe in South Sudan", press release, 22 October 2015.

[22] International Covenant on Economic, Social and Cultural Rights, art. 11. See also the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

[23] See International Covenant on Civil and Political Rights and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

58. Also according to the Agreement, the hybrid court for South Sudan, to be established by the African Union Commission, will investigate and prosecute individuals responsible for violations of international law and/or applicable South Sudanese law, committed from 15 December 2013 through to the end of the transitional period.

59. Once established, the hybrid court will probably only have capacity to investigate and prosecute a limited number of those responsible, most likely the political and military leadership that orchestrated the violence. The work of the court would therefore necessarily need to be complemented by a national judicial process in order to provide all the many victims and their families with redress. The local justice, however, is barely operational and does not currently appear to have the capacity to investigate effectively, impartially and independently gross and systematic human rights violations and abuses, violations of international humanitarian law and other international crimes; nor is there a realistic role for customary processes, which, particularly with regard to sexual and gender-based violence, have no experience in addressing crimes on this scale.

60. In such a context, OHCHR recommends the creation within the national judiciary of a specialized judicial structure that would be responsible for the investigation, prosecution and adjudication of violations and abuses amounting to international crimes. Consideration should be given to United Nations experiences and lessons learned with similar courts to envisage the participation of international prosecutors and judges, supported by international investigators, who could serve in the national judicial system alongside national counterparts.[24]

61. In the meantime, it is critical to ensure that those responsible for violations and abuses of human rights or international humanitarian law outlined by OHCHR in the present report do not become part of the transitional Government of national unity. A comprehensive vetting process must therefore be set up to ensure that all those responsible are removed from office or precluded from appointment.

V. Technical assistance

62. The United Nations and international donors have been engaged in technical assistance in South Sudan since 2005, in particular with regard to the reform of criminal justice institutions, with a focus on police, prosecutors, judges and prisons and training in combating sexual and gender-based violence. Despite the considerable human and financial investments made and the fact that international police and prison experts have been co-located and mentored their national counterparts, success in these areas has been modest. Furthermore, members of the police force have themselves been implicated in the killing of civilians in December 2013.

63. In May 2014, in the light of the deteriorating situation, the Security Council, in its resolution 2155 (2014), amended the mandate of UNMISS, re-prioritizing the protection of civilians, human rights monitoring and investigation, creating the conditions for delivery of humanitarian assistance, and supporting the implementation of the Cessation of Hostilities Agreement. In this context, capacity-building was suspended.

64. More than two years since the beginning of the conflict, there is considerable pressure from the Government for the international community to resume capacity-building. Given the findings made by OHCHR, however, it is not timely to re-introduce assistance by the United Nations in the form of training or other support to government

[24] See OHCHR, *Rule-of-Law Tools for Post-conflict States: Maximizing the legacy of hybrid courts* (United Nations publication, Sales No. E.08.XIV.2).

entities. Indeed, supporting any capacity-building activities for current government entities would implicitly condone the violations described in the present report. Capacity-building activities for the transitional authorities could be viable if the transitional Government of national unity were to commit to ending the violence against the civilian population, to excluding perpetrators – including SPLA and the security services – from the structures of the transitional Government, and to preventing further violations and abuses, and if it were to demonstrate a commitment to further accountability, in particular by cooperating with the hybrid court and other accountability mechanisms. If such commitments were made, the High Commissioner would encourage exploring technical support for the section of the Agreement on the Resolution of the Conflict in the Republic of South Sudan dedicated to transitional justice, accountability and reconciliation, including assistance for consultations and a needs assessment to inform efforts to achieve truth, justice, reparations, reconciliation and guarantees of non-recurrence.

65. The above-mentioned support should take into account the widespread displacement and destruction witnessed throughout much of the country, which have severely weakened and transformed communities and local government structures. Much of the population is deeply traumatized by the years of violence. Initiatives related to reconciliation, including awareness-raising and a national consultation process, much take such considerations into account.

VI. Conclusions

66. Since December 2013, gross human rights violations and abuses and serious violations of international humanitarian law have been perpetrated in South Sudan. These acts have included killings and other attacks against civilians, rape and other sexual violence, arbitrary arrest and detention, the deprivation of liberty, abduction and violations of the rights of children, including their recruitment and use in hostilities. Throughout the conflict, sexual and gender-based violence has been widespread. All parties to the conflict are responsible for violations of international law. In 2015, however, the findings in the present report have shown that State actors bear the greatest responsibility for the violations of both international human rights law and international humanitarian law in the face of a weakened opposition force.

67. The military offensive by the Government in Unity State was conducted with the apparent purpose of spreading terror among civilians, including by means of killings, widespread sexual and gender-based violence and the pillaging of property. In addition to conflict-related violence, the Government increasingly suppressed freedom of expression and other democratic rights.

68. The Government's failure to produce the reports of its investigations into the violations committed in 2013 and 2014 or to undertake any investigations leading to the prosecution of alleged human rights violations and human rights abuses and violations of international humanitarian law raises questions with regard to its commitment to ensuring accountability.

69. The legacy of violence and revenge, the lack of political will, the patterns of violations and abuses as documented in the present report and the impunity enjoyed by perpetrators suggest that only far-reaching reforms in governance, the security apparatus and the judicial system will be able to ensure respect of and protection for human rights and prevent similar violations and abuses from recurring.

70. The dismantlement of the apparatus of violence while holding to account those responsible for the immense suffering of the population is the only viable, lasting solution for ensuring the protection and promotion of human rights in South Sudan.

While reconciliation processes may be an essential part of peace efforts, the failure to ensure accountability, including the failure to establish the hybrid court for South Sudan and the other measures under the Agreement on the Resolution of the Conflict in the Republic of South Sudan, will undoubtedly contribute to new cycles of violence.

VII. Recommendations

71. **The High Commissioner reiterates the recommendations made, but largely unimplemented, in previous reports submitted to the Human Rights Council.**

72. **Recognizing the urgent need to bring an end to the extensive violations and abuses of human rights and violations of international humanitarian law in South Sudan, and to provide for justice and accountability, the High Commissioner appeals to all sides of the conflict promptly to cease hostilities and to support the establishment of a transitional Government of national unity, in order to move towards a State based on respect for human rights and the rule of law.**

73. **The High Commissioner accordingly recommends that all parties to the conflict:**

(a) **Desist immediately from violations of international human rights law and international humanitarian law, and abuses of human rights, in particular those amounting to crimes under international law, and specifically attacks on civilians and killings, and acts of rape and sexual and gender-based violence, arbitrary detention, abduction and widespread looting.;**

(b) **Declare and ensure that violations of international human rights law and international humanitarian law, and abuses of human rights will not be tolerated, and that those suspected of such acts will be removed from duties pending investigation or will not be appointed.**

74. **The High Commissioner recommends that the transitional Government of national unity:**

(a) **Ensure that, over time, all individuals in South Sudan who have suffered violations or abuse of their rights are afforded an effective remedy**

(b) **Ensure that all individuals responsible for orchestrating the violence in South Sudan, namely the political and military leadership of the parties to the conflict, do not enter the Government, and that those alleged to have committed violations and abuses are precluded from standing for election;**

(c) **Institute, as a matter of priority, a comprehensive vetting programme compliant with standards of due process to remove from and prevent the recruitment into State services (including SPLA, law enforcement and the national security services) of individuals, in particular at senior levels, for whom there are reasonable grounds to believe that they have been involved in violations of international human rights law or international humanitarian law, or abuses of human rights;**

(d) **Take steps to stop and prevent violations and abuses of the rights of children, including by actively preventing and combating the recruitment and use of children in hostilities by parties to the conflict;**

(e) **Take effective action to eliminate sexual and gender-based violence, including by implementing a gender-sensitive protection and reporting mechanism, and by providing redress, rehabilitation services and access to justice for victims;**

(f) Respect and promote the role of civil society, including by ensuring that freedoms of opinion and expression and of peaceful assembly are guaranteed, and ensure the protection of human rights defenders and journalists;

(g) With regard to other transitional justice measures referred to in the Agreement on the Resolution of the Conflict in the Republic of South Sudan, support genuine consultations, including by means of public education programmes, so that there is informed participation by victims, women's groups and all stakeholders, and needs assessment to inform the efforts aimed at achieving truth, reparations, reconciliation and guarantees of non-recurrence.

75. With regard to criminal justice accountability measures, the High Commissioner also recommends that the transitional Government of national unity:

(a) Extend full cooperation and support to the hybrid court by assisting its investigations and complying with its rulings;

(b) Consider the establishment of a specialized judicial structure in South Sudan courts focusing on violations and abuses amounting to international crimes, supported by specifically appointed judges, prosecutors, lawyers and law enforcement officials, with the possibility of embedding international legal actors to work with South Sudanese officials. Its jurisdiction would be complementary to that of the hybrid court.

76. The High Commissioner recommends that the African Union Commission:

(a) Establish promptly a hybrid court for South Sudan;

(b) Establish a designated unit in the hybrid court that provides support to victims and witnesses, including of sexual violence, with special measures in the case of children, and ensures their safety and security before, during and after proceedings;

(c) Create a unit within the hybrid court dedicated to awareness-raising on the role, functions and processes of the hybrid court, including with regard to crimes of sexual violence, and promote the full participation of victims in the pretrial, trial, sentencing and reparations stages.

77. The High Commissioner recommends that the Human Rights Council:

(a) Continue to monitor developments in South Sudan, and to that end consider the establishment of a dedicated mechanism on South Sudan to report on progress towards accountability and the situation of human rights;

(b) Encourage relevant special procedures to visit South Sudan;

(c) Share a copy of the present report with the General Assembly and the Security Council for deliberation.

78. The High Commissioner recommends that the international community consider applying a phased approach to the provision of technical assistance to State institutions in South Sudan on the basis of progress made in the establishment of the transitional Government of national unity, and in the meantime consider providing support for civil society organizations and the national human rights commission of South Sudan.

79. The High Commissioner recommends that the Security Council:

(a) Remain seized of the matter of criminal accountability for serious violations of international humanitarian law and gross violations and abuses of

international human rights that have been perpetrated by all parties to the non-international armed conflict;

(b) Consider expanding the sanctions regime by imposing a comprehensive arms embargo on South Sudan;

(c) Consider, failing the expeditious establishment of the hybrid court, referring the matter to the International Criminal Court.